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ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION

229764

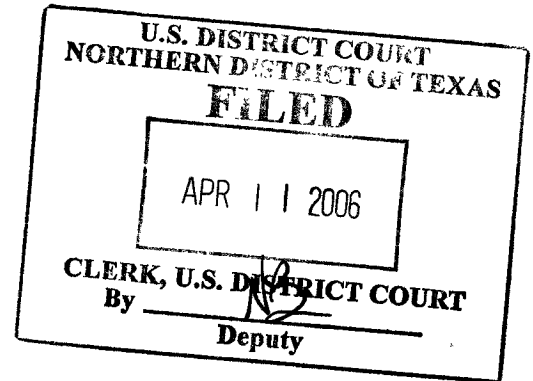
A. E. BAGBY; THOMAS R. BROOKS; §  
BRANTLEY BOOE, JR. and DONNA BOOE; §  
THOMAS G. CAIN and PATRICIA J. CAIN; §  
WALTER CUNNINGHAM; §  
DONALD R. HEYDEN; JOHN R. HUNDEMERS §  
DIANNA LAGOW; CHARLES P. LITTLE; §  
and ALVA L. JANICE; TERRI McDANIEL; §  
JERRY H. MILLER; L. J. NERWICH; §  
WILLIAM J. NERWICH; JOHN NERWICH; §  
JACK OLSEN; JAMES E. OWEN; §  
RICHARD PERKINS and SHIRLEY PERKINS; §  
RONALD K. SCHALL and JERRY L. SCHALL; §  
CHARLES SNYDER; MARYLOU SNYDER; §  
EARL L. SWAIN and HELEN SWAIN; §  
MICHAEL E. SWAIN; GEORGE THOMASI §  
and ROBBYNE J. BICKFORD; §  
ROCCO TRICOLI; JOHN L. VICKERS; §  
KAREN LYNN WASHINGTON and §  
JOSEPH YAEGER, §

Plaintiffs

VS.

RYDEX INVESTMENTS,  
RYDEX DISTRIBUTORS, INC. and  
PADCO ADVISORS, INC.,

Defendants



**3-06CV0.648-R**

CIVIL ACTION NO. \_\_\_\_\_

(JURY DEMAND)

**ORIGINAL COMPLAINT WITH JURY DEMAND**

**PARTIES, JURISDICTION AND VENUE**

1. The plaintiffs are adult resident citizens of the State of Texas.

The Defendants RYDEX INVESTMENTS and PADCO ADVISORS, INC. are corporations incorporated under the laws of the State of Maryland and with their principal place of business in the State of Maryland. The address is 9601 Blackwell Road, Suite 500, Rockville, Maryland 20850. Defendant RYDEX DISTRIBUTORS, INC. is a corporation incorporated under the laws of the State of Maryland with its principal place of business in the State of Maryland, and may be served with process by serving its registered agent, CT Corporation System, at 350 North St. Paul Street, Dallas, Texas 75201.

This action is between citizens of different states. Jurisdiction in this Court is premised upon 28 U.S.C. §1332. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

Venue is proper in the Northern District of Texas, where the Plaintiffs reside and where the cause of action accrued.

### **BACKGROUND**

2. The Plaintiffs are retired airline pilots, their spouses, former spouses, and the children and spouses of other retired American Airline pilots.

3. The Plaintiffs all entrusted their retirement savings to Robert Gormly ("Gormly"), an investment advisor. Gormly was also an active pilot with American Airlines. Focusing on retiring and retired fellow pilots, Gormly found a niche in using

the large size of pilot IRA rollovers to gain the maximum break point at \$1,000,000 in the American Funds family for his clients. As other pilots from this natural affinity group, of which Gormly was a well-known member, became clients with substantial IRA Rollovers, Gormly invested the assets through his then broker dealer, Omega Securities, Inc. The investments were predominantly in the American Funds Group and were widely diversified among asset classes. The years of 1991 through 1998 were among the highest years of investment returns in both stocks and bonds in history. Gormly's clients were soundly invested and their accounts either grew or maintained their values.

4. Around April or May of 1998, Gormly left Omega and became a Registered Representative with Securities America, Inc. Gormly also became a Registered Investment Advisor Representative of Securities America Advisors, Inc., the sister company of Securities America.

5. After these changes in Gormly's registrations, Gormly began to express dissatisfaction to the Plaintiffs with the American Funds that had avoided much of the bubble market of 1998 and 1999. Gormly began to counsel the plaintiffs to participate in the new regime of fee based programs giving the advisor full discretionary authority over the accounts.

6. In the latter part of 2001, Gormly, with the blessing of Securities America, began to tout yet another investment strategy in seminars, letters, and counseling sessions with his clients. This new strategy involved the Rydex family of funds.

7. The Rydex funds are mutual funds with very high fees and trading costs. They are based upon various security indexes (S&P 500, NASDAQ 100, etc.) There are Rydex Funds that match the movement of certain indexes on a one to one basis, both up and down (the down move funds emulate the investment results of short sales, a highly speculative technique).

8. Even more speculative are Rydex Funds which are leveraged with options, futures, margin borrowing and other derivatives to create returns that are MULTIPLES of the up and down moves of the underlying indexes. These are recognized in the investment world as some of the most volatile and speculative securities created. The inappropriateness of these vehicles in an IRA Rollover retirement account cannot be overstated.

9. Rydex provided its marketing people to speak at seminars for Gormly's clients, the plaintiffs herein. Mr. Woody Harris, Senior Vice-President of the Rydex Funds, attended the October 31, 2001 Gormly seminar for the purpose of introducing the family of Rydex funds and to answer investor questions from this group of elderly

retired clients of Gormly. Harris spoke at other seminars to Gormly's clients, the plaintiffs herein, on January 31, 2002 and April 26, 2002.

10. Other seminars for the plaintiffs were attended by Rydex personnel and Rydex Funds were advocated for use by these elderly retired investors. Rydex vice-president Ted Morrow made presentations concerning the leveraged inverse funds at seminars in July 2002, October 2002, January 2003, and April 2003.

11. Gormly began to frantically trade the Plaintiffs' retirement assets in the extraordinarily volatile Rydex index funds that were, in every way imaginable, unsuitable for the plaintiffs.

12. Additionally, the assets of the retirement accounts and regular accounts were day-traded, a highly speculative trading technique involving the purchase and sale of the Rydex funds on a daily or even an intra-day basis.

13. The turnover in the Plaintiffs' individual accounts was in multiple MILLIONS of DOLLARS in 2003. All of this turnover was in Rydex funds.

14. Rydex funds are aimed at large, institutional investors, who use them to hedge against losses in down markets. The Plaintiffs were invested in funds such as Rydex Titan 500; Rydex Tempest 500; Rydex Velocity 100; and Rydex Venture 100. According to Rydex, the Titan seeks results that correlate to 200% of the S&P500 but invests in derivatives. The Tempest likewise invests in derivatives but seeks returns

based on the inverse of the S&P500. The Velocity and Venture are similar to the Titan and Tempest but correlate directly and inversely, respectively, to the NASDAQ. These are not appropriate for most people and certainly not appropriate or suitable for elderly retirees in their income producing IRA accounts.

15. Beginning in the fall of 2001, Defendants were involved directly and indirectly with Gormly in soliciting and advising the Plaintiffs to invest millions of dollars in defendants' funds. This involvement lasted through 2003. Extraordinary losses followed. In 2003 alone, the plaintiffs had actual losses in Rydex funds in excess of \$7,000,000.00. This is the same year that the S&P500 Index was up 28.66% and the NASDAQ was up 50.01%.

#### **CLAIMS FOR RELIEF**

16. Plaintiffs repeat and reallege each and every allegation contained above as if fully set forth herein.

17. Defendants are liable for damages to plaintiffs under Vernon's Ann. Texas Civ. St. Art. 581-33 (F)(2). Specifically, defendants directly or indirectly and with reckless disregard for the truth, materially aided Rob Gormly and/or Securities America, as sellers of the Rydex funds under section (A)(2). That section provides that a person who sells a security by means of an omission to state material facts necessary in order to make statements made, in light of the circumstances under which they are

made, not misleading, is liable to the person buying the security for damages when the buyer no longer owns the security. Defendants failed to make known to the Plaintiffs during the marketing seminars presented by its employees that the derivative and inverse funds offered were not suitable or appropriate for use by elderly retirees in their income producing IRAs.

18. Plaintiffs are entitled under Art. 581-33 (D)(3) to damages computed as the amount paid for the Rydex funds plus legal interest from the purchase date less the value or consideration received for the securities upon disposition and any income paid to the plaintiffs by the defendants.

19. Defendants are liable for damages to plaintiffs based upon common law fraud. The defendants intentionally refrained from making relevant disclosures during the marketing seminars that would have informed the plaintiffs that as elderly retirees living on the income provided by their IRAs, that the Rydex derivative and inverse funds were in appropriate and unsuitable investments.

20. Plaintiffs demand Judgment in their favor against Defendants as follows:

- (a) actual, statutory, rescissionary and compensatory damages and penalties;
- (b) punitive damages;
- (c) costs of suit;
- (d) reasonable attorneys' fees;

- (e) pre-judgment and post-judgment interest; and
- (f) such other and further relief as the Court deems just and proper under the circumstances.

Respectfully submitted,

LAW OFFICE OF RICHARD ELLIOTT



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ATTORNEY FOR PLAINTIFFS

Of Counsel:

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JS 44  
(Rev. 3/99)**CIVIL COVER SHEET**

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

A. E. Bagby

APR 11 2006

CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
Dallas**DEFENDANTS**Rydex Investments;  
Rydex Distributors, Inc. and  
Padco Advisors, Inc.**(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF**  
(EXCEPT IN U.S. PLAINTIFF CASES)**COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT**  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

**(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)**Richard Elliott  
4709 West Lovers Lane  
Dallas, Texas 75209 (214) 358-7600**ATTORNEYS (IF KNOWN)**

3-06CV 0.648-R

**II. BASIS OF JURISDICTION**

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
- ☐ 2 U.S. Government Defendant
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES**

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- Citizen of This State ☒ 1 ☐ 1
- Citizen of Another State ☐ 2 ☐ 2
- Citizen or Subject of a Foreign Country ☐ 3 ☐ 3
- Incorporated or Principal Place of Business in This State ☐ 4 ☐ 4
- Incorporated and Principal Place of Business in Another State ☐ 5 ☒ 5
- Foreign Nation ☐ 6 ☐ 6

**IV. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)**

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input checked="" type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 990 Other Statutory Actions
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>HABEAS CORPUS:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7609

**V. ORIGIN**

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- Transferred from another district (specify) \_\_\_\_\_
- ☐ 6 Multidistrict Litigation
- Appeal to District Judge from Magistrate Judgment ☐ 7

**VI. CAUSE OF ACTION**

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

28 US 1332

Securities fraud; action for rescission and damages

**VII. REQUESTED IN COMPLAINT:**CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$ 7

million

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO**VIII. RELATED CASE(S) (See instructions): IF ANY**

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

April 10, 2006

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_